

Item _____

Prepared by: Christy Kinard
Assistant County Attorney

Approved by: Brian Kuhn
Shelby County Attorney

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE SHELBY COUNTY CHARTER BY DELETING EXHIBIT “A” AS A DUPLICATION OF THE CIVIL SERVICE ACT ORDINANCE; BY AMENDING SECTIONS 1.02, 2.02, 2.03, 2.04, 2.06, 3.03, 3.05, 3.07, AND 5.10 RELATIVE TO THE GOVERNMENTAL POWERS, COUNTY AUDITS, PURCHASING PROCEDURES, NOMINATION OF COUNTY COMMISSIONERS TO FILL VACANCIES, COUNTY COMMISSION CHAIRMAN’S SALARY, ORDINANCE ADOPTION AND EFFECTIVE DATE, COUNTY MAYOR’S DUTIES, VACANCY IN THE OFFICE OF COUNTY MAYOR, BUDGET PROCEDURES, AND RESIDENCY REQUIREMENT FOR COUNTY OFFICIALS AND EMPLOYEES; AND BY ADDING THREE NEW SECTIONS TO THE “GENERAL PROVISIONS” UNDER ARTICLE V RELATIVE TO HOLDING MORE THAN ONE ELECTIVE OFFICE, SUCCESSION OF AUTHORITY FOLLOWING A DISASTER, AND RECALL OF ELECTED COUNTY OFFICIALS. SPONSORED BY CHAIRMAN DAVID LILLARD AND CHAIRMAN PRO TEMPORE DEIDRE MALONE.

WHEREAS, by opinion issued January 12, 2007, the Tennessee Supreme Court held the Knox County Charter invalid because Knox County, Tennessee failed to comply with the enabling legislation for instituting a charter form of government by not expressly establishing the offices of the constitutional county officers, being the sheriff, trustee, register, county clerk, and assessor; and by not otherwise expressly assigning the duties and functions traditionally performed by those officers to any other administrative or executive officers; and

WHEREAS, by opinion issued January 26, 2007, the Shelby County Attorney’s Office opined that an amendment to the Shelby County Charter should be proposed that either specifically creates the offices of, and assigns the duties and functions to, the sheriff, trustee, register, county clerk, and assessor; or creates administrative or executive offices to carry out the duties and functions of said constitutional county officers; or creates a combination of these two options; and

WHEREAS, during the County Commission’s process of evaluating the amendment options and receiving information relative to proposing Charter amendments for voter referendum, Exhibit “A” was considered for deletion from the Shelby County Charter as a duplication of the Civil Service Act which is a private act codified in the Shelby County Code of Ordinances at Chapter 12, Articles II and III, Sections 12-26 to 66; and

WHEREAS, the provisions of the Shelby County Charter identified for amendment address the vesting of governmental powers, length of employment of CPAs conducting County audits, application of purchasing procedures, nomination of County Commissioners to fill vacancies, method for setting the salary of the chairman of the County Commission, requirements for adopting salary increase ordinances, effective date of various ordinances, method for filling a vacancy in the office of County Mayor, budget procedures, and residency requirement for County officials and employees; and

WHEREAS, new provisions related to the holding of more than one elective office, succession of authority following a disaster, and recalling of elected County officials were considered for addition to the Shelby County Charter; and

WHEREAS, the Shelby County Board of Commissioners has proposed the amendments to the Shelby County Charter contained herein and same should be published and submitted to the voters of Shelby County in accordance with the state election laws during the next countywide election; and

WHEREAS, state law requires the County Attorney prepare a summary not to exceed two hundred (200) words in length when the full statement of the proposed amendments exceeds three hundred (300) words in length.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY, TENNESSEE, that, pursuant to Article V, Section 5.05D of the Shelby County Charter, the following proposed amendments to the Shelby County Charter shall be submitted to the qualified voters of Shelby County at the next countywide election allowed by law and the Shelby County Election Commission, in accordance with the state election laws, is hereby directed to publish the proposed amendments which read as follows:

PROPOSED AMENDMENTS:

The Shelby County Charter shall be amended by deleting Exhibit “A” to the Shelby County Charter, Exhibit “A” being a duplicate copy of the Civil Service Act which is a private act that is properly codified in Chapter 12, Articles II and III, Sections 12-26 to 66 of the Shelby County Code of Ordinances;

by amending Sections 1.02, 2.02, 2.03, 2.04, 2.06, 3.03, 3.05, 3.07, and 5.10 relative to the vesting of the power to conduct governmental affairs and application of the purchasing procedures; a County Commissioner holding more than one elective office and being nominated to fill vacancies; the method for filling a vacancy in the office of County Mayor; the requirements for increasing the salary of certain officials by ordinance and the effective date of ordinances; the authority to set by ordinance exemptions to the residency requirement for County officials and

employees; and the authority to set by resolution the length of employment of the CPAs conducting audits for the County, the County Commission chairman's salary, budget requirements and procedures, and the date the County Mayor must submit the consolidated budget; said sections shall be amended to read as follows:

“Section 1.02. Private and local affairs.

With regard to private and local affairs, all lawful powers are vested in the mayor, county commission, and elected county charter officers, except those powers reserved to the judiciary. This investment of legislative, executive and other powers and duties shall be as full and complete, and the authority to perform or to direct them as broad as it is possible to delegate or confer, it being the intent to invest in the government of Shelby County every authority, power, and responsibility for the conduct of the affairs of the government of Shelby County, including the powers to adopt and enforce resolutions and ordinances.

Section 2.02. Other powers.

- B. The county commission shall provide annually for an independent audit of the accounts and other evidences of financial transactions of the county and of every county office and such special audits as deemed necessary. This audit shall be made by a certified public accountant or by a firm of certified public accountants designated by the board of county commissioners, and no individual auditor or member of an auditing firm so designated shall have any personal financial interest, direct or indirect, in the fiscal affairs of the county or of any of its offices. The designated certified public accountants shall be qualified by training and experience and shall have sufficient staff to perform the audit. The individual certified public accountant or firm of certified public accountants may be employed to perform the audit for the term set by resolution.
- C. By ordinance, the board of county commissioners shall establish purchasing procedures and/or rules and/or regulations for all purchases, sales and contracts for services through competitive bids or otherwise. Such ordinance may provide that the county mayor may promulgate rules and regulations to administer the purchasing procedures established by ordinance. The purchasing rules and regulations shall apply to all county officials elected pursuant to this charter and shall only apply to clerks of courts, if not contrary to state law.

Section 2.03. Membership and election.

- E. In any election to be filled by the board of county commissioners, if any member of the board of county commissioners accepts the nomination as a candidate for any countywide office filled by a vote of the people or the county commission, such member shall automatically become disqualified to vote to fill that office. Acceptance of a nomination by a member of said body will mean that the nomination cease and a roll call begun upon the list of nominees without removing that said name from nomination. If a member's name is placed in nomination, the chairman of the board of county commissioners shall specifically ask that person if they desire their name to remain in nomination prior to the vote beginning on the list of nominees. If the nominee states “yes,” then the nominee shall take a seat in the public area of the meeting chambers. If the member is elected, his office on the board of county commissions shall be declared immediately vacant.

Section 2.04. Commissioner's salary and expense.

- B. Notwithstanding Article II, Section 2.06C(3)(e) herein, the compensation of the chairman of the board of county commissioners shall be determined annually by resolution and shall be set prior to the election of the chairman.

Section 2.06. Ordinances and resolutions.

- C. (3) All ordinances shall be adopted upon receiving a majority vote of the membership of the board of county commissioners, except for ordinances dealing with the following subjects, which shall be adopted on receiving a two-thirds vote of the membership of the board of county commissioners:

- (e) Any proposal which increases the salary and/or expenses of the county mayor, board of county commissioners, county school board members or any elected county charter officer.
- (4) An ordinance shall not take effect until 15 days after its passage, except in case of an emergency ordinance and as provided for in Article V, Section 5.05B herein.

Section 3.03. County mayor duties.

The county mayor shall:

- B. Prepare and submit to the board of county commissioners with the assistance of appropriate department heads and other responsible officials the budgets and financial reports. The county mayor shall present the consolidated budget of the county to the board of county commissioners as set forth by resolution in order for the board of county commissioners either to approve said budget as presented or to modify and amend the same as may be deemed requisite in order to determine the amount of taxes necessary to be levied. The adoption of the budget shall be by resolution.

Section 3.05. County mayor – vacancy.

- A. If a vacancy occurs in the office of county mayor by death, resignation, removal, or disability, or otherwise, the chairman of the board of county commissioners shall serve as acting mayor. If the chairman of the board of county commissioners is unable or unwilling to serve as acting county mayor for any reason, the chairman pro tempore of the board of county commissioners shall serve as acting mayor.
- B. The chairman or chairman pro tempore shall serve as the acting county mayor until an interim county mayor is elected by the board of county commissioners. While serving as acting county mayor, the chairman or chairman pro tempore shall not exercise the powers of his office as chairman, chairman pro tempore, or county commissioner. The board of county commissioners shall appoint an interim county mayor within forty-five (45) days after the chairman or chairman pro tempore begins serving as acting county mayor.
- C. The interim county mayor shall serve until a successor is elected and qualified at the next countywide election allowed by the state election laws.

Section 3.07. Budget procedures.

- B. All elected county officials and clerks of courts shall submit their budgets to the county mayor for the purpose of that office submitting a consolidated budget; provided, however, none of the aforementioned subparagraphs (1) through (3) of 3.07A shall be applicable to this submission. The county commission may adopt a resolution requiring all offices which receive appropriations from the county government to submit a multi-year budget, unless contrary to state law. However, it is within the discretion of the county commission to adopt said multi-year budget. The county commission may also adopt by resolution any other budget procedures deemed necessary.

Section 5.10. Residence of county official, employees and attorney qualifications required.

- C. All employees must be residents of Shelby County at the time of appointment and shall continue to reside in Shelby County as a condition of their employment, provided, however, this provision shall not apply to any employee working for Shelby County government on the effective date of this charter or to any class of employees exempted by ordinance based on a legitimate governmental interest.”

and by adding three new sections to the “General Provisions” of Article V relative to holding more than one compensated elective office, succession of authority following a disaster, and recall of elected county officials as set forth below:

“Section 5.22. Holding more than one compensated elective office.

- A. No elected county official shall be eligible to hold any other local, county, state or federal compensated elective office, except for offices of a temporary nature. If an elected county official assumes another compensated elective office, the

official shall vacate the county office within ninety (90) days. Provided, however, anyone who currently holds another compensated elective office may run for a county elective office so long as, if elected, that person resigns the existing elective office within ninety (90) days of election as a county official.

- B. If a vacancy exists in the office of an elected county official pursuant to this section, the board of county commissioners shall elect an interim who shall serve until a successor is elected and qualified at the next countywide election allowed by the state election laws.

Section 5.23. Succession of authority and continuity of government in a disaster.

- A. As used in this section, except as otherwise specifically indicated, “disaster” shall be defined by the meaning of “disaster” and “emergency” as set forth in T.C.A. § 58-2-101, which shall include, but not be limited to, enemy attack, sabotage, hazardous material incident, extraordinary fire, flood, storm, pandemic, epidemic or earthquake.
- B. In the event of a disaster, notwithstanding Article III, Section 3.05 to the contrary, if the county mayor is temporarily unavailable or unable to perform the duties of office for any reason, the powers and duties of the office of county mayor shall be temporarily exercised and discharged in the following order based on the availability of the county official to serve as acting county mayor until the county mayor becomes available or a vacancy is declared and filled pursuant to Article III, Section 3.05 herein:
 - (1) Chairman of the board of county commissioners.
 - (2) Chairman pro tempore of the board of county commissioners.
 - (3) Member of the board of county commissioners with the most consecutive years of service on the county commission. In the event more than one county commissioner has the same number of years of consecutive service, then:
 - (a) If a majority of the membership of the board of county commissioners is available, the county commissioners shall elect, by a majority vote, a chairman for the board of county commissioners to serve as acting county mayor; or
 - (b) If a majority of the membership of the board of county commissioners is unavailable, the county commissioner elected to the lowest district number, then lowest position number shall serve as acting county mayor.
 - (4) Chief administrative officer of the county mayor’s administration.
- C. In the event of a disaster, if the chairman and/or chairman pro tempore of the board of county commissioners is temporarily unavailable or unable to perform the duties of office for any reason, the remaining county commissioners shall elect by a majority vote an interim chairman and/or chairman pro tempore to serve the remainder of the annual term for such officer or until the chairman and/or chairman pro tempore becomes available for duty.
- D. In the event of a disaster, notwithstanding Article II, Section 2.05 herein, if a majority of the membership of the board of county commissioners is temporarily unavailable or unable to perform the duties of office for any reason, the powers and duties of the board of county commissioners shall be temporarily exercised and discharged in the following order for a period of twenty-one (21) days, unless a majority of the county commissioners becomes available for duty:
 - (1) If less than a majority of county commissioners are available for duty, they shall have full authority to act in all legislative matters. Prior to the end of the twenty-one (21) calendar day period, the county commissioners shall by majority vote appoint interim county commissioners to serve until the county commissioners become available for duty or vacancies are declared and filled pursuant to Article II, Section 2.11 herein.
 - (2) If no county commissioners are available for duty, the county mayor or acting county mayor shall appoint one interim county commissioner from each county commission district to serve until the county commissioners become available for duty or vacancies are declared and filled pursuant to Article II, Section 2.11 herein.

- E. All meetings of the board of county commissioners during a disaster shall be public and minutes of said meetings shall be taken and transcribed as the official records of the board of county commissioners.
- F. Within one year from the date this section becomes effective, the board of county commissioners shall adopt an ordinance establishing policies and procedures for maintaining the continuity of government in the event of a disaster which shall include, but not be limited to, emergency powers; emergency procurement; records preservation; temporary relocation of the seat of county government; relocation of, and delivery of services to, citizens of Shelby County directly impacted by the disaster; and any other provisions necessary to ensure continuity of government and delivery of essential services to the citizens of Shelby County.

Section 5.24. Recall of elected county officials.

- A. The county mayor, members of the board of county commissioners, and all county charter officers elected pursuant to this charter may be removed from office by the recall method provided for in Title 2 of the state election laws and in accordance with this section, but in no event shall such county officials be subject to recall during the first one hundred eighty (180) days or the last one hundred eighty (180) days of the term for which such county officials were elected.
- B. Voters of the county may circulate a petition to recall the county mayor, members of the board of county commissioners, and all county charter officers elected pursuant to this charter. Any petition to recall under this section shall be signed by at least fifteen percent (15%) of the registered voters eligible to vote for the office that is the subject of the petition to recall.
- C. If a majority of the voters vote “no,” the incumbent county official shall remain in office. If a majority of the voters vote “yes,” the incumbent county official shall be deemed recalled and removed from office. In cases where the incumbent county official is recalled from office, the board of county commissioners shall appoint an interim county official who shall serve until a successor is elected and qualified at the next countywide election allowed by the state election laws.”

BE IT FURTHER ORDAINED, that the Shelby County Attorney prepared a summary of the proposed Charter amendments in accordance with state law and is hereby authorized to make any necessary technical amendments to said summary after the adoption of this ordinance.

BE IT FURTHER ORDAINED, that upon receipt of a certified copy of this Ordinance, the Shelby County Election Commission is hereby directed to place the following summary on the ballot at the next countywide election in accordance with the state laws concerning referendum elections:

SUMMARY:

Ordinance No. (*number*), adopted by the Shelby County Board of Commissioners on June 2, 2008, proposes to delete Exhibit “A” to the Shelby County Charter, a duplication of the Civil Service Act ordinance, and to amend Sections 1.02, 2.02, 2.03, 2.04, 2.06, 3.03, 3.05, 3.07, and 5.10 of the Shelby County Charter to vest county charter officers with power to conduct governmental affairs, address the nomination of County Commissioners to fill vacancies, change the method for filling a vacancy in the County Mayor’s office, and clarify application of purchasing procedures, effective date of ordinances, and salary increases requiring two-thirds vote ordinance. The amendments authorize the County Commission to set by ordinance exemptions to the residency requirement for County officials and employees; and to set by resolution the length of employment for CPAs conducting County audits, County Commission chairman’s salary, budget requirements and procedures, and date County Mayor must submit consolidated budget. The amendments forbid county elected officials from holding another

compensated elective office, provide for recall of county officials, and set the succession of authority following a disaster. The amendments become effective September 1, 2008.

Yes _____

No _____

BE IT FURTHER ORDAINED, that upon this Ordinance becoming effective, the Clerk of the Shelby County Board of Commissioners shall immediately deliver a certified copy of this Ordinance to the Shelby County Election Commission in accordance with Article V, Section 5.05B of the Shelby County Charter.

BE IT FURTHER ORDAINED, that the proposed Charter amendments shall be deemed ratified and adopted if approved by a majority of those voting in the referendum election.

BE IT FURTHER ORDAINED, that for the purposes set forth in this Ordinance, the proposed amendments to the Shelby County Charter shall take effect September 1, 2008 in accordance with Article V, Section 5.05D of the Shelby County Charter.

BE IT FURTHER ORDAINED, that, in accordance with state law, the Shelby County Election Commission shall certify the returns of the referendum election to the Shelby County Clerk and the Secretary of State together with a copy of the proposed Charter amendments previously filed with the Shelby County Election Commission by the Shelby County Board of Commissioners.

BE IT FURTHER ORDAINED, that upon receipt of the proclamation from the Secretary of State showing the results of such referendum election on the adoption or rejection of the proposed Charter amendments, the Shelby County Election Commission shall (1) attach one copy of the proclamation to the copy of the proposed Charter amendments theretofore certified to the Secretary of State and (2) deliver one copy of the proclamation to the Shelby County Clerk who shall attach the same to the copy of the referendum returns and proposed Charter amendments theretofore certified to, and deposited with, such Shelby County Clerk; the Shelby County Clerk subsequently delivering the proclamation and all attachments thereto to the Clerk of the Shelby County Board of Commissioners who shall make it a part of the minutes.

BE IT FURTHER ORDAINED, that all laws constituting the present Shelby County Charter that are not in conflict with the Charter amendments proposed herein be and the same are hereby continued in full force and effect, and all laws in conflict therewith be and the same are hereby repealed.

BE IT FURTHER ORDAINED, that if any clause, section, paragraph, sentence or part of this Ordinance shall be held or declared to be unconstitutional and void, it shall not affect the remaining parts of this Ordinance, it being hereby declared to be the legislative intent of the Shelby County Board of Commissioners to have passed the remainder of this Ordinance notwithstanding the part so held unconstitutional and void, if any.

BE IT FURTHER ORDAINED, that this ordinance shall take effect upon adoption pursuant to Article V, Section 5.05B of the Shelby County Charter.

Chairman of County Commission

A C Wharton, Jr., County Mayor

Date: _____

ATTEST:

Clerk of County Commission

FIRST READING: April 23, 2008

SECOND READING: April 28, 2008

ADOPTED THIRD READING: _____